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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 Jack Daniels

11 Plaintiff,

No. CIV S-04-0382 LKK CMK P

12 vs.

13 Latimore, Medical Technical Assistant

14 Defendants.

ORDER

15 \_\_\_\_\_/  
16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action  
17 filed pursuant to 42 U.S.C. § 1983. By order filed February 11, 2005, plaintiff's first amended  
18 complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed a  
19 second amended complaint.

20 In his second amended complaint, plaintiff states that he has a valid prescription  
21 for HIV medication. Plaintiff alleges that, on at least three occasions, defendant Latimore  
22 refused to give plaintiff his HIV medication. Delay of, or interference with, medical treatment  
23 can amount to deliberate indifference to the serious medical needs of a prisoner in violation of  
24 the Eighth Amendment. See Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000). The  
25 undersigned, therefore, finds that the second amended complaint states a cognizable claim for  
26 relief against defendant Latimore pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b).

1 Plaintiff's complaint does not, however, state a cognizable claim for relief against  
2 defendants Camacho, Dr. Bick, Dr Nadim K. Khoury, Tom Donahue, Dr. Anderson, Ken Allen,  
3 N. Grannis, or Teresa A. Schwartz, and it appears beyond a doubt that he can prove no set of  
4 facts which would entitle him to relief on these claims. See Hishon v. King & Spalding, 467 U.S.  
5 69, 73 (1984). The undersigned recommends dismissal of plaintiff's claims against these  
6 defendants in separately filed findings and recommendations.

7 If the allegations against defendant Latimore in the amended complaint are  
8 proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. The court,  
9 therefore, finds that service is appropriate and will direct service by the U.S. Marshal without  
10 pre-payment of costs. Plaintiff is informed, however, that this action cannot proceed further  
11 until plaintiff complies with this order. Plaintiff is warned that failure to comply with this order  
12 may result in dismissal of the action. See Local Rule 11-110.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Service is appropriate for the following defendant: Latimore, Medical  
15 Technical Assistant.

16 2. The Clerk of the Court shall send plaintiff one USM-285 forms, one  
17 summons, an instruction sheet and a copy of the amended complaint filed June 6, 2004.

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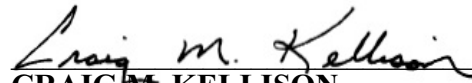
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1           3. Within thirty days from the date of this order, plaintiff shall complete the  
2 attached Notice of Submission of Documents and submit the following documents to the court:

- 3           a. The completed Notice of Submission of Documents;  
4           b. One completed summons;  
5           c. One completed USM-285 form for each defendant listed in number 1  
6           above; and  
7           d. Two copies of the endorsed amended complaint filed June 6, 2004.

8           4. Plaintiff need not attempt service on defendants and need not request waiver of  
9 service. Upon receipt of the above-described documents, the court will direct the United States  
10 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4  
11 without payment of costs.

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13 DATED: December 4, 2005.

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16 **CRAIG M. KELLISON**  
17 UNITED STATES MAGISTRATE JUDGE  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Plaintiff,

No. CIV

vs.

Defendants.

NOTICE OF SUBMISSION  
OF DOCUMENTS

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Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_  
Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff